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MICHIGAN LAW REVIEW

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NOTE AND COMMENT

THE MICHIGAN RAILROAD TAX CASES.—Although the opinion of the court in these cases has not yet appeared in a form for general circulation, we have been enabled to examine it through the courtesy of Judge Wanty. The questions involved have been more or less prominently before the public and the profession for more than two years, and the following brief summary of the holding of the court will probably be of general interest.

Previous to the year 1900, the railroads of the state had been taxed upon their gross earnings. But in that year the State Constitution was amended so as to permit the legislature to provide for taxation upon the basis of the true cash value of the railroad property, and at the next session of the legislature, in 1901, an act was passed authorizing the State Board of Assessors to levy taxes upon this basis.

The original tax levy made by the State Board of Assessors upon the railroad property was \$13.68 + per thousand dollars of its assessed valuation. This was determined as follows. The Board assessed the railroad property at its actual cash value. It then refused to accept the assessed valuation of the other property of the state as given by the local assessors, on the ground that it was far below the actual cash value thereof, but itself reassessed all such property at what it deemed the actual cash value. And on the basis of its own assessment of the railroad and other property it fixed the rate on the railroad property as above stated.

But upon the application of the Board of Education of the city of Detroit,

the Supreme Court granted a writ of mandamus requiring the State Board to accept the valuation given by the local assessors upon all property other than that of the railroads, and upon this basis to redetermine the rate. *Board of Education v. State Board of Assessors*, 133 Mich. 116. This was done, and a new rate was levied upon the railroad property of \$16.55 + per thousand dollars of its assessed valuation. It was to stay the collection of this tax that the twenty-three Michigan railroads brought these suits in the Circuit Court of the United States for the western district of Michigan.

Except upon a question of jurisdiction, the court sustained the contention of the Auditor General upon every point involved. And these points were as follows:

1. The railroads claimed that they were deprived of due process of law, for the reason that due process requires the tax to be levied by a legislative body representing the community which includes the person or contains the property taxed; while the tax here levied upon the railroads is strictly a state tax and yet is arbitrarily determined by local officers.

But the court held that the tax was not determined by the local officers, but by the state legislature, which merely made the estimates of the local assessors the basis for computing the rate. This was merely a mode of measurement prescribed by the legislature, and did not violate the fourteenth amendment to the Federal Constitution by delegating the rate making power to the local legislatures and assessing officers.

2. The railroads urged a technical objection to the validity of the tax law on the ground that it violated the State Constitution in not distinctly stating the tax and the object to which it was to be applied. But the court overruled this objection on the authority of *Walcott v. The People*, 17 Mich. 68.

3. Again, the railroads claimed that they had not been accorded a hearing before the Board of Assessors. But this contention was held to be without merit for the reason that the functions of the Board were purely ministerial, and a hearing could be of no value before a body which had no discretion in the premises.

4. Great emphasis was laid upon the contention by the railroads that the statute provided a different method for the taxation of railroad property owned by railroad corporations, and railroad property owned by individuals and other corporations, such as logging railroads, electric interurban roads, etc. This, it was claimed, made ownership the basis of the tax, which denied to the railroad companies the equal protection of the laws.

Upon this question the court said: "It is not necessary that all railroad property be taxed under one method and at the same rate, but it is only necessary that all property belonging to railroads in the same class be taxed alike. If it is conceded that these logging roads owned by manufacturing corporations or individuals are railroads, they certainly are not railroads of the same class with the complainants. It seems as though it must be as competent for the legislature to place different classes of railroads in different classes, for the purpose of taxation, as it is to place railroads in a class by themselves and tax them and their property differently from other persons. Street railroads, which are chartered by the ordinances of various cities, and electric suburban roads, organized under a general statute for that purpose,

have different privileges and powers from those given to the roads organized under the general railroad statutes; and those roads built for service in the business in which individuals and manufacturing corporations are engaged have still further restricted powers and privileges, and we can see no reason why, in its discretion, the legislature may not, for purposes of taxation, place the railroads organized under the general railroad statutes in a class by themselves, leaving the other roads to be taxed under the general laws of the state, without violating the fundamental principles of taxation, or the fourteenth amendment to the Federal Constitution."

5. The railroads further contended that they were discriminated against for the reason that while their property was assessed at its full cash value, the rest of the property in the state was undervalued by the local assessors, and they were therefore required to pay a greater proportion of the taxes than was justly due from them.

But the court said that a law could not be considered unconstitutional simply because as a fact the officers sworn to administer it did not do their duty. If their assertion were correct that there has been an undervaluation of the other property, the railroads could at most claim relief only from the misconduct of the officers and not from the statute, which works injustice only when violated.

6. The last contention of the railroads upon which they rested their resort to the jurisdiction of the Federal court, was that there was a discrimination against them in this, that while in the assessment of personal property generally, debits are required to be deducted from credits, the statute requires the credits of the railroads to be assessed at their full value without any deduction of indebtedness owed by them. But this claim was disposed of by the court on the same ground as the one last considered, and it was held that the legislature had an undoubted right to make any class of property bear a heavier share of the burden of taxation than another class, and could, if it saw fit, lawfully reduce credits by debits in one class and not in another.

7. Finally, as to the fact of the undervaluation of other property, the court held that it had jurisdiction to determine the question, notwithstanding there was nothing in the legislation complained of contravening the Constitution of the United States. But it held that relief on this ground could be obtained only when it was shown that the undervaluation had been so habitual, systematic and intentional as to amount to fraudulent undervaluation. Reviewing the evidence in the case the court held that there was nothing in the record to show any such fraudulent conduct on the part of the local assessing officers, and the railroads were therefore entitled to no relief.

IS A VOTE BY MACHINE A CONSTITUTIONAL BALLOT?—The voting machine is now authorized by statute in about fifteen of our states as a method of conducting elections, and its use seems to be constantly increasing in popularity. The constitutionality of this method was recently challenged in the case of *People ex rel City of Detroit v. Board of Inspectors of Elections* (1905), — Mich. —, 102 N. W. Rep. 1029.

In accordance with the statute (Mich. C. L. §§ 3750-58, amended by Act